

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

VOLUME I VIDEOTAPED DEPOSITION OF TODD KING,
produced as a witness on behalf of the Defendants in
the above styled and numbered cause, taken on the 23rd
day of July, 2008, in the City of Tulsa, County of
Tulsa, State of Oklahoma, before me, Marlene Percefull,
a Certified Shorthand Reporter, duly certified under
and by virtue of the laws of the State of Oklahoma.

1 Q Okay. There is that technology, correct, that -- 11:42AM
2 let's go back to alum treatment of lakes.

3 A Uh-huh.

4 Q The notion of alum treatment is that the aluminum
5 sulphate -- 11:42AM

6 A Mm-hmm.

7 Q -- will seal the phosphorus at the bottom of the
8 lake and prevent it from reemerging during lake
9 turnover and feeding algae, true?

10 A The general principle is the alum sequesters the 11:42AM
11 phosphorus, reacts with it and drops it out.

12 Q Okay. You said it a lot better than I did. Now,
13 the notion of layered aeration is that -- is that the
14 introduction of oxygen at the bottom of the lake can
15 have the same effect on sealing phosphorus at the 11:42AM
16 bottom of the lake as alum can, is that true?

17 A With a different mechanism. There's that
18 potential that when you create an oxic condition,
19 oxygen is present, that it -- it helps keep the
20 phosphorus maintained within the sediment, but because 11:43AM
21 the sediment is such a thin layer, the oxygen can be
22 taken up in a relatively thin layer so it's less
23 effective than alum.

24 Q Have you -- have you been involved in any project
25 where that's actually done? 11:43AM

1 **A** Which? 11:43AM

2 **Q** The layered aeration being utilized to seal
3 phosphorus at the bottom of the lake?

4 **A** No. I mean, I'm relying on Drs. Cooke and Welch.

5 **Q** But there's -- there are actually pieces of 11:43AM
6 equipment and stuff, the machinery, that is used to do
7 this sort of work, isn't there?

8 **A** There's aeration equipment, yes.

9 **Q** Did you investigate the cost of using that in this
10 report? 11:43AM

11 **A** Not as part of this report, no.

12 **Q** And why did you not?

13 **A** I think primarily here it was more of the real
14 usefulness of the layered aeration was to create
15 habitat as opposed to remediate the phosphorus so it 11:44AM
16 kind of fell outside of the scope on that basis.

17 **Q** Do you agree with me that the -- that what your
18 goal should be is least cost-effectiveness?

19 **A** Yes, sir.

20 **Q** Okay. 4.3.1, Cessation of Land Application Within 11:44AM
21 the IRW, do you recognize that the plaintiff in this
22 case is the State of Oklahoma, at least one of them?

23 **A** Yes, sir.

24 **Q** And do you understand and recognize that the State
25 of Oklahoma passes laws and rules and regulations? 11:45AM

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3
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9 ENVIRONMENT C. MILES TOLBERT,)
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11 TRUSTEE FOR NATURAL RESOURCES)
12 FOR THE STATE OF OKLAHOMA,)
13)

14 Plaintiff,)
15)

16 vs.) 4:05-CV-00329-TCK-SAJ
17)

18 TYSON FOODS, INC., et al,)
19)

20 Defendants.)
21)

22 - - - - -

23 VOLUME II OF THE VIDEOTAPED
24 DEPOSITION OF TODD KING, produced as a witness
25 on behalf of the Defendants in the above styled and
26 numbered cause, taken on the 30th day of January,
27 2009, in the City of Tulsa, County of Tulsa, State
28 of Oklahoma, before me, Lisa A. Steinmeyer, a
29 Certified Shorthand Reporter, duly certified under
30 and by virtue of the laws of the State of Oklahoma.

1 regarding the inability at this time to select a
2 preferred recommendation for Tenkiller Reservoir?

3 A Yes, sir.

4 MR. BLAKEMORE: Object to form.

5 Q Or that -- maybe the words that were used, at 09:44AM
6 this time you cannot make a definitive
7 recommendation for the lake I think is how it was
8 put.

9 A Yes, sir.

10 Q Do you agree that is your current testimony? 09:44AM

11 A Yes, sir.

12 Q All right. Let's look at that part of your
13 report, if we could, please. See it at Page 19.

14 Actually, let's look at Page 18, your Opinion

15 3.2.3.2, treatment. 09:44AM

16 A Yes, sir.

17 Q This discussion beginning there and continuing
18 for the next page or two, that is part of the
19 potential alternatives for Tenkiller Reservoir;
20 correct? 09:45AM

21 A Yes, sir.

22 Q On Page 19, one of these potential treatments
23 you discussed is P inactivation with alum, aluminum
24 sulfate; correct?

25 A Yes, sir. 09:45AM

1 Q This specific potential remedy or remedial
2 step is one that you are not recommending to be
3 implemented at this time; is that correct?

4 A I categorized it as requires additional
5 investigation and assessment.

09:46AM

6 Q And does that mean that you cannot recommend
7 it at this time based upon the current data in hand?

8 A Yes.

9 Q To your knowledge, has anyone done a technical
10 evaluation of the feasibility of treating Tenkiller
11 Reservoir with alum?

09:46AM

12 A No, no, not that I can think of.

13 Q This alum treatment, you also mention it on
14 Page 12 of your report with regard to treatment of
15 soils and Page 16 with potential treatment of the
16 river. Do you recall that?

09:46AM

17 A Yes.

18 Q And is it also correct, Mr. King, that for
19 each -- these other two medium, that being the soils
20 and the river, that that is not a remedial action
21 that you have sufficient data in order to recommend
22 at this time?

09:47AM

23 A Where are we on the report, please?

24 Q Sure. Let's see. Let's look at Page 12 for
25 the soils. If you need me to break that question

09:47AM

1 down, I will. I'm not trying to confuse you.

2 **A** Okay, please.

3 **Q** So I'll strike that question.

4 **A** Okay.

5 **Q** On Page 12 you discuss alum treatment as also 09:47AM
6 a potential remedial action for soils.

7 **A** Yes.

8 **Q** And your conclusion was, requires additional
9 investigation and assessment?

10 **A** Yes, sir. 09:47AM

11 **Q** Does that mean, based upon the information you
12 have in hand today, you cannot recommend that
13 remedial action?

14 **A** Yes, sir.

15 **Q** To your knowledge has anyone conducted any 09:47AM
16 technical evaluation in the Illinois River watershed
17 of the effectiveness of alum treating of soils in
18 the watershed?

19 **A** Could you say that one more time?

20 **Q** Sure. To your knowledge are you aware of 09:48AM
21 anyone that has done a specific technical evaluation
22 of the effectiveness of alum treating soils in the
23 Illinois River watershed?

24 **A** As part of -- as part of the literature or as
25 part of the work that we're currently doing? 09:48AM

1 Q As part of the assessment associated with this
2 litigation.

3 A I know Dr. Gordon has -- Dr. Gordon Johnson
4 has worked with alum. I just don't know where, if
5 that was within the watershed or not. I don't know
6 the answer.

09:49AM

7 Q Well, within your capacity as the individual
8 working with the State to identify, assess and
9 enumerate remedial options, you have not seen or
10 been involved in that type of study, that is, the
11 effectiveness of alum treatment of IRW soils?

09:49AM

12 A No.

13 Q Okay. Now, with regard to the river, I
14 believe Page 16, you mention that -- if you want to
15 take a second and look at that. I believe you
16 discuss it near the top of the page if you want to
17 take a minute to reread your paragraph.

09:49AM

18 A P inactivation with alum?

19 Q Yes, sir. First, tell me if you agree with
20 me, this is -- deals with what you call the
21 riverine, which what you mean is the river; correct?

09:49AM

22 A Yes, sir.

23 Q Okay, and in the case of alum treatment of the
24 river system, your recommendation is that this
25 technology not be retained; is that true?

09:50AM

1 **A** Yes.

2 **Q** And in the way -- in your language in the way
3 you discuss these remedies, if it's not retained, in
4 your opinion it's rejected?

5 **A** I'm not sure I understand the difference. 09:50AM

6 **Q** Okay. It's not going to be considered and
7 wouldn't be recommended?

8 **A** Correct.

9 **Q** Period?

10 **A** Correct. 09:50AM

11 **Q** Okay, and there will be no further assessment
12 of non-retained remedies?

13 **A** Yes.

14 **Q** Okay. The discussion you had with Mr.
15 Blakemore where you said you were confused by the 09:51AM
16 discussion in your prior deposition that used the
17 word the success, in quotation marks, the word
18 success, you say in your deposition you interpreted
19 that word incorrectly?

20 MR. BLAKEMORE: Object to form. 09:51AM

21 **Q** I'm trying to understand what the confusion
22 is.

23 **A** The phrase success, when I was in the
24 deposition last time, was, I guess in my mind,
25 saying that the remedies had been identified and 09:52AM